

David F. Sugerman, OSB No. 862984  
Nadia H. Dahab, OSB No. 125630  
**SUGERMAN LAW OFFICE**  
707 SW Washington St., Ste. 600  
Portland, OR 97205  
Tel: 503-228-6474  
Fax: 503-228-2556  
[david@sugermanlawoffice.com](mailto:david@sugermanlawoffice.com)  
[nadia@sugermanlawoffice.com](mailto:nadia@sugermanlawoffice.com)

*Attorneys for Plaintiffs*

Glenn Greene, NY Bar No. 2674448  
Senior Trial Attorney  
**U.S. DEPARTMENT OF JUSTICE, CIVIL  
DIVISION**  
**CONSTITUTION AND SPECIALIZED  
TORT LITIGATION**  
P.O. Box 7146, Ben Franklin Station  
Washington, D.C. 20044  
Tel: 202-616-4143  
Fax: 202-616-4314  
[Glenn.Greene@usdoj.gov](mailto:Glenn.Greene@usdoj.gov)

*Attorneys for Defendants Wolf and Cuccinelli in  
their individual capacities*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ANGELICA CLARK, ELLEN GASS,  
NATHANIEL WEST, and ROWAN MAHER,  
Individually and on behalf of all similarly  
situated individuals

Plaintiffs

v.

CHAD WOLF, Acting Secretary United States  
Department of Homeland Security;  
KENNETH T. CUCCINELLI, Senior Official  
Performing the Duties of the Deputy Secretary  
United States Department of Homeland  
Security; GABRIEL RUSSELL, Regional  
Director with the Department of Homeland

Civil Action No. 3:20-cv-01436-IM

JOINT MOTION TO VACATE RULE  
16 SCHEDULING ORDER  
DEADLINE

Security's Federal Protective Service; ALLEN JONES; RUSSEL BURGER; ANDREW SMITH; MARK MORGAN; RICHARD CLINE; JOHN DOE SUPERVISORY DEFENDANTS 1-60; JOHN DOE PATROL LEVEL DEFENDANTS 61-200, agents of the U.S. Marshals Service, Federal Protective Service, U.S. Department of Homeland Security and U.S. Customs and Border Protection, acting in concert and in their Individual capacities,

Defendants.

### **LOCAL RULE 7-1 CERTIFICATION**

Counsel for Plaintiffs has conferred with counsel for Defendants Chad Wolf and Kenneth Cuccinelli (“the parties”), and the parties stipulate to the relief sought in this motion.

### **MOTION**

Pursuant to Federal Rule of Civil Procedure (FRCP) 16(b)(2), the parties respectfully move to vacate the deadline for this Court to issue a scheduling order under FRCP 16(b)(1). The deadline is currently January 29, 2021. The parties propose that the Court vacate the deadline until service is complete on the John Doe defendants, once those defendants have been identified and named in an amended complaint. Thereafter, the parties propose to confer within 30 days of completion of service for the purpose of proposing a new deadline for the scheduling order.

### **MEMORANDUM OF LAW**

FRCP 16(b)(2) states that, “unless the judge finds good cause for delay,” the judge must issue a scheduling order “within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The deadline for issuing the scheduling order currently is January 29, 2021.

Good cause exists for an extension of this deadline. Pursuant FRCP 26(f), the parties are required to hold an initial conference to develop a discovery plan no later than 21 days before the court issues its scheduling order pursuant to Federal Rule of Civil Procedure 16(b)(2).<sup>1</sup> But Plaintiffs have sought, and this Court has ordered, limited third-party discovery for the purpose of identifying and naming the John Doe defendants. Plaintiffs are in the process of conferring with counsel for the United States regarding the scope of “any appropriate protective orders” that this Court ordered may apply to that third-party discovery, *see ECF 26*, and are briefing for this Court certain issues that they have been unable to resolve through that process. Once those issues are resolved, Plaintiffs intend to conduct the limited third-party discovery that this Court has granted. Additionally, Plaintiffs filed a First Amended Complaint on December 22, 2020, *see ECF 27*, and are in the process of completing service on additional named defendants. Defendants, for their part, intend to file motions to dismiss on January 20, 2021.

The parties therefore agree that a Rule 26(f) conference is premature at this point, and that such conference should take place at a later date. The parties stipulate that good cause exists to extend the deadline for this Court to issue its scheduling order. The parties propose that the court vacate the current Rule 16 deadline. The parties further propose that they confer within 30 days of service on the John Doe defendants, once they have been identified and named in an amended complaint, for the purpose of proposing a new deadline for the scheduling order.

**SO STIPULATED.**

---

<sup>1</sup> The parties recognize that Local Rule (LR) 26-1(1) states that “[t]he parties must hold a Fed. R. Civ. P. 26(f) initial conference of counsel for discovery planning within 30 days after a defendant files a responsive pleading or a motion under Fed. R. Civ. P. 12,” and that LR 16-2(a) requires that the parties request a Rule 16(b) conference “during or promptly after” the 26(f) conference. It is unclear, however, whether these local rules supplement or replace the deadlines set out in the federal rules.

DATED this 8th day of January, 2021.

**SUGERMAN LAW OFFICE**

/s/ Nadia H. Dahab

David F. Sugerman, OSB No. 862984  
Nadia H. Dahab, OSB No. 125630  
707 SW Washington St., Ste. 600  
Portland, OR 97205  
Tel: 503-228-6474  
Fax: 503-228-2556  
[david@sugermanlawoffice.com](mailto:david@sugermanlawoffice.com)  
[nadia@sugermanlawoffice.com](mailto:nadia@sugermanlawoffice.com)  
*Attorneys for Plaintiffs*

**U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION,  
CONSTITUTIONAL AND SPECIALIZED TORT  
LITIGATION**

/s/ Glenn Greene

Glenn Greene, NY Bar No. 2674448  
Senior Trial Attorney  
P.O. Box 7146, Ben Franklin Station  
Washington, D.C. 20044  
Tel: 202-616-4143  
Fax: 202-616-4314  
[Glenn.Greene@usdoj.gov](mailto:Glenn.Greene@usdoj.gov)  
*Attorneys for Defendants Wolf and Cuccinelli in their  
individual capacities*